In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

516

THE FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF NEW HAVEN,

Appellant,

v.

WILLIAM F. CONNELLY, TAX COMMISSIONER OF THE STATE OF CONNECTICUT,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

MOTION OF APPELLEE TO DISMISS

I

The defendant, appellee, respectfully moves to dismiss the above appeal on the ground that said appeal does not present a substantial federal question or that the judgment appealed from rests on an adequate non-federal basis. This motion is made under the provisions of Rule 16.

II

Brief in Support of Motion

Though the notice of appeal contains three questions (Part III, notice of appeal), only one question is pressed in the jurisdictional statement (p. 3) and that is, whether the retroactive provision of Sec. 896c, 1953 Sup. to General Statutes of the State of Connecticut, violates any constitutional right which the plaintiff may have under the Fourteenth Amendment to the Federal Constitution.

Sec. 896c (which appears on p. 3 of jurisdictional statement) does not purport to levy a new tax or increase an old one. It merely defined more clearly than it appeared prior to its enactment what was meant by the words "interest paid" in the basic taxing statute.

Plaintiff implies in his jurisdictional statement that it was exempt from the imposition of the Connecticut corporation business tax prior to January 1, 1952, because it was exempt from the federal income tax prior to said date and the Connecticut statute did not tax corporations which enjoyed such exemption. This statement is not accurate. The statute involved is Sec. 397b, 1951 Sup. to General Statutes (formerly Sec. 1897, Rev. 1949, and as later amended, Sec. 883c, 1953 Sup.), and the material portion reads as follows:

> "*Imposition of tax.* Every mutual savings bank, savings and loan association and building and loan association doing business in this state, and every other corporation or association carrying on, or having the right to carry on, business in this state except . . . (2) companies exempt by federal law or by the regulations of the bureau of internal revenue from the federal corporation net income tax . . . shall pay annually, a tax or excise upon its franchise for the privilege of carrying on or doing business within the state . . ."

It is defendant's claim that the exception in the statute refers only to "every other corporation or association" doing business in the state and not to the plaintiff, which is a savings and loan association and is specifically made subject to tax irrespective of its exemption from the federal income tax prior to January 1, 1952. This construction of the statute was acquiesced in by the plaintiff for many years prior to the commencement of the present action. From the very inception

of the corporation business tax law, savings and loan associations were specifically made subject to the tax without the exemption contained in (2) of the statute (see Sec. 418c, 1935 Sup. to General Statutes when tax law was originally passed). The plaintiff has always recognized its liability for the tax in question by filing tax returns prior to January 1, 1952 and paying the tax without claiming a deduction for the amount of dividends paid to its members (Stip. of facts, par. 11, p. 9, printed record.)

Prior to January 1, 1952 the plaintiff, though it was not subject to the federal income tax, was allowed to deduct from its gross income all items deductible under the federal corporation income tax law by other corporations who were subject to it, except among other things, "interest paid during the income year" (Sec. 401b, 1951 Sup., also appearing as Sec. 886c, 1953 Sup.) This provision was in effect at least as far back as 1947 (see Sec. 1898, Gen. Stat. p. 21 juris. statement). It was understood by the taxpayer and the Tax Commissioner that the so-called dividends paid to its members constituted "interest" within the meaning of Sec. 401b, 1951 Sup. (formerly Sec. 1898 Gen. Stat.) and was not deductible. The plaintiff never attempted to deduct these dividend payments prior to January 1, 1952 (Stip. of Facts, par. 11, p. 9, printed record).

When the plaintiff became subject to the federal income tax law on January 1, 1952 it was allowed to deduct the dividends for the purposes of the federal tax and furthermore, the treasury department ruled that the so-called dividends did not constitute interest. At that time the General Assembly of the State of Connecticut was not in session. The regular session of 1953 offered the first opportunity it had to make it clear to the plaintiff that insofar as the Connecticut tax was concerned, the so-called dividends would still be considered as "interest paid" and not deductible on the state tax return (See op. Supreme Court of Errors, p. 15, juris. statement). Hence the enactment of the statute in question in June, 1953. This statute (Sec. 896c, 1953 Sup.) did not lay an additional tax. It merely made it clear that the legislature always considered the word "interest" in Sec. 886c to include "dividends" paid by the plaintiff type of corporation to its members, who were really depositors. The 1953 session of the General Assembly convened early in January and adjourned in June of that year. (Sec. 1 Gen. Stat. and Art. III Sec. 2 Const.

appearing in 1953 Sup. to Gen. Stat.) Plaintiff therefore is chargeable with knowledge that it was considering the bill in question and it should not have paid to its depositors the tax on the dividends.

Hence the question really is whether a state may define the meaning of a word in a taxing statute (namely "interest") retroactively for a reasonable period of time, in line with the previously accepted meaning of that word by the taxpayer. No question of retroactive interference with vested rights is involved. The validity of the basic taxing statute contained in Chap. 91, General Statutes, Rev. 1949, is not brought into question by plaintiff's appeal.

Plaintiff's tax for 1952 was due prior to April 1, 1953. In making that payment it deducted, for the first time, the dividends paid. This was contrary to its procedure in previous tax years. If it desired to save the interest which was assessed it could have paid the amount of the tax in dispute under protest prior to April 1, 1953 and then taken an appeal to the courts. If the appeal was sustained the refund of tax would have carried interest at the rate of 6% per annum (Sec. 1915-1917, Gen. Stat.). Plaintiff therefore cannot claim an invasion of its constitutional rights because of the assessment of interest on the tax deficiency.

Conclusion

For the foregoing reasons the defendant, appellee, claims that there is no substantial federal question involved and also that the judgment entered can be sustained on the ground that a taxing statute is not involved when the provisions of Sec. 896c, 1953 Sup., are enforced. Defendant therefore requests that his motion to dismiss be granted.

Respectfully submitted,

JOHN J. BRACKEN
Attorney General,
State of Connecticut,
LOUIS WEINSTEIN
Assistant Attorney General,
State of Connecticut
Attorneys for Appellee,
State Capitol
Hartford, Connecticut

Dated: November 21, 1955

DEC 1 0 1955
HAROLD B. WILLEY, Clerk

In the

Supreme Court of the United States

OCTOBER TERM, 1955

No. 516

THE FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF NEW HAVEN,

Appellant,

v.

WILLIAM F. CONNELLY, TAX COMMISSIONER OF THE STATE OF CONNECTICUT,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

APPELLANT'S BRIEF IN OPPOSITION TO MOTION OF APPELLEE TO DISMISS

EDWARD F. BECKER,
CHARLES M. LYMAN,
JAMES WM. MOORE,
Counsel for Appellant,
129 Church Street,
New Haven 8, Connecticut

Dated: December 5, 1955.

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 516

THE FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF NEW HAVEN,

Appellant,

v.

WILLIAM F. CONNELLY, TAX COMMISSIONER OF THE STATE OF CONNECTICUT,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

APPELLANT'S BRIEF IN OPPOSITION TO MOTION OF APPELLEE TO DISMISS

The motion of Appellee to dismiss the appeal is based upon two alternative grounds: (1) that the appeal does not present a substantial Federal question, or (2) that the judgment appealed from rests on an adequate non-Federal basis.

I

THE APPEAL PRESENTS A SUBSTANTIAL FEDERAL QUESTION

There can be no question that when the validity of a st statute is properly challenged on the ground that it is in confl with the Constitution of the United States a Federal questi is raised. Appellant raised such a question as to the validity Section 896c, which imposed a retroactive tax upon appella this question was reserved as question "A" for the Supreme Co of Errors of the State of Connecticut; that court discussed t question extensively in its opinion, answered it "No" and there denied the Federal challenge. (See Juris. Statement pp. 3, 19.) While other questions were reserved for the State Co (see Juris. Statement pp. 13, 14) the only question pursued on t appeal is the aforesaid reserved question challenging the valid of Section 896c under the Federal Constitution.

In its Jurisdictional Statement (page 6) Appellant poin out that there were two lines of decisions by this Court w regard to the validity of retroactive taxation, in one of whi a new tax measured by past events was sustained and in t other of which a new tax was denied validity when it attempt to tax completed transactions. It was pointed out that the insta case lies somewhere between these two lines of decisions; t it is more nearly within the latter line; and that Section 89 violates the Federal Constitution.

The obvious and proper way for Appellee to meet this argum was by showing either that the cases cited by Appellant had sett the question so as to leave it no longer substantial or by pointi out one or more decisions of this Court that rendered the qu tion no longer substantial.

Appellee does not cite or discuss a single decision of this Court that disposes of the problem. Nor does it make any analysis thereof.

II

THE JUDGMENT APPEALED FROM DOES NOT REST ON AN ADEQUATE NON-FEDERAL BASIS

Substantially the entire argument in Appellee's motion is devoted to an affirmative answer to the question whether Appellant was liable for the additional tax without reference to Section 896c.

Question "F," which was reserved for the Connecticut Supreme Court, raised that matter. It read (see Juris. Statement, p. 14):

> "F. Without reference to the validity or effect of Section 896c, are the dividends paid to depositors by mutual savings banks, building and loan associations and like institutions of substantially the same nature and character as the interest payments made to depositors in banks operated by corporations with capital stock, so that a deduction for dividends should be denied because of the express denial of a deduction for interest paid?"

This question the Court below expressly refused to answer at all (Jurisdictional Statement, p. 19).

The Connecticut Supreme Court did not hold that the 1953 Amendment, Section 896c, "merely made it clear that the legislature always considered the word 'interest' . . . to include 'dividends' paid by the plaintiff . . .," as claimed by Appellee on Page 3 of his motion. If it had, it would have had to consider its own decision in *Preveslin* vs. *Derby & Ansonia Developing Co.*, 112 Conn. 129, 144 (1930), in which it was held that the legislature had no power to declare the true intent and meaning of a previous statute and give that meaning a retrospective operation. It did not, for example, say that Section 1898 of the Gen-

eral Statutes of Connecticut (Jurisdictional Statement, Page 2
should be interpreted so as to include the type of dividends pa
by Appellant in the statutory language "interest paid." If it ha
done this, Appellee would be correct in claiming that the judgme
below rested upon an adequate non-Federal basis in the absen
of a constitutional challenge to Section 1898.

Appellee also claims that Appellant was chargeable with know
edge that the bill in question was under consideration. In t
first place, it is a strange doctrine that citizens have constructi
notice of the pendency of bills in the legislature. In the seco
place, it appears from Appellee's own motion that there could ha
been no such bill pending until some time in January, 195
whereas Appellant was required by law to close its books a
declare its dividend on December 31, 1952, when no such b
could be pending. In the third place, there is nothing in the reco
to show how long after January 1, 1953, the bill was in fa
introduced. In the fourth place, the claim is at odds with t
decision in *Untermeyer* vs. *Anderson*, 276 U.S. 440, 445 (1928

The final suggestion that an alternative procedure had be
open to Appellant on December 31, 1952, has nothing to do,
course, with any argument as to the constitutionality of the su
sequent action that was in fact taken by the General Assemb
when it enacted Section 896c on June 9, 1953.

III

CONCLUSION

The judgment of the Supreme Court of Errors of the Sta
of Connecticut does not rest on an adequate non-Federal bas
The Court specifically refused to rest tax liability upon sta
statutes in effect when Appellant paid its tax, by refusing
answer question "F." Instead the Court passed upon the validi
of Section 896c and denied that it violated the Federal Constit

tion. This question, upon which the state court judgment rests, is substantial.

Respectfully submitted,

EDWARD F. BECKER,
CHARLES M. LYMAN,
JAMES WM. MOORE,
Counsel for Appellant,
129 Church Street,
New Haven 8, Connecticut

Dated: December 5, 1955.